

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7020 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHARATBHAI RAMJIBHAI PARMAR

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

1. Special Civil Application No. 7020 of 2004
MR KB PUJARA for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1
MR NAGESH SOOD, AGP for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE M.S.SHAH

Date of decision: 01/11/2004

ORAL JUDGEMENT

The petitioner, who is an unemployed blind person, aged about 23 years, has prayed for a direction to the District Primary Education Officer, Kutch to accept the petitioner's original certificates and mark sheets for the relevant qualifying examinations and to consider his application for the post of Sangeet Visharad Vidya Sahayak and to call him for interview for

appointment to the aforesaid post.

2. The respondent authorities had issued advertisement inviting applications for the posts of Vidya Sahayak, inter alia, for Vidya Sahayaks in music, from amongst the candidates possessing the qualification of SSC/HSC pass and also the qualification of Sangeet Visharad or equivalent qualification from a recognized institution. So far as blind candidates are concerned, only the qualification of Sangeet Visharad or equivalent qualification is required. The advertisement also contained several instructions, the first of which (as translated) read as under :-

"All the original certificates for the requisite qualifications and an attested true copy of each shall be submitted alongwith the application form."

The advertisement was issued on 22.3.2004 for the post of Vidya Sahayaks to be appointed in primary schools under the Kutch District Primary Education Committee. On 24.3.2004, the petitioner submitted his application form alongwith the true copy of Sangeet Visharad certificate by RPAD. When the petitioner realized that he was required to produce the original certificate alongwith attested true xerox copies thereof, the petitioner produced the original certificate alongwith his letter dated 10.4.2004, a copy whereof is annexed at Annexure "C" to the petition. However, the District Primary Education Officer declined to accept the original certificate on the ground that the original certificates were required to be produced alongwith the application form and not subsequently. The petitioner, therefore, again reiterated his request on 15.6.2004 (Annexure "C" colly.) requesting that the original certificate may be accepted. Since on the second occasion also the request was not entertained, the petitioner has moved this Court.

3. In response to the notice issued by this Court, Mr Nagesh Sood, learned AGP has submitted that condition No.1 in the advertisement was very specific and that such a condition imposed by the authorities has been upheld by a Division Bench of this Court in LPA No. 1163/98 decided on 5.10.1998 and again by another Division Bench of this Court in SCA No. 8220/03 and connected petitions decided on 27.9.2004.

4. Mr HS Munshaw, learned counsel for the District Primary Education Officer also has taken the same stand.

5. Mr KB Pujara, learned counsel for the petitioner, however, relies on the affidavit dated 28.10.2004 of the petitioner and submits that the petitioner, who is a blind person, has submitted only one application for appointment as Vidya Sahayak in Kutch district and the petitioner has not submitted any such application for appointment in other districts. Mr Pujara has also invited this Court's attention to the reasons given by the Division Bench for upholding the condition and has submitted that it is in order to prevent the candidates from applying in more than one district that the condition has been imposed and the petitioner has not applied in any other District. Hence, the petitioner has not committed the breach of any fundamental condition or policy of the Government, but only because the petitioner is a blind person, his case may be considered sympathetically so that he is not punished for the inadvertent mistake of not submitting the original certificate alongwith the application form.

6. Having heard the learned counsel for the parties, it appears that there is considerable substance in the submissions made by Mr Pujara for the petitioner. In the judgment dated 5.10.1998 in LPA No. 1163 of 1998 of this Court (Coram : Chief Justice Hon'ble Mr Justice KB Balakrishnan - as His Lordship then was and Hon'ble Mr Justice MH Kadri) held as under :-

"The only question raised by the appellants' counsel is that the appellants were denied opportunity to submit applications in all the districts they wanted to apply. There is no denial as such in submitting application. The only condition laid down is that they should submit the applications with the original certificates of PTC and SSC. It is obvious that the authorities wanted to restrict the applicants they they should apply only in one of the districts. Even though the scheme, as such, is State-wise, the appointments are to be made District-wise. The authorities are perfectly justified in imposing a condition that the candidate shall apply only in one district. We do not think that it is an unreasonable restriction imposed on the appellants. In the public employment, some time, the candidates may apply in several districts and cause great inconvenience in making selection. As the appellants are not denied opportunity to make applications, we do not think that the condition that the appellants should produce the original

certificates of PTC and SSC alongwith the applications is violative of Articles 14 and 16 of the Constitution of India."

(emphasis supplied)

Again in the judgment dated 27.9.2004 in SCA No. 8220 of 2004, another Division Bench of this Court (Coram : Hon'ble Chief Justice Mr Justice Bhawani Singh & Hon'ble Mr Justice HK Rathod) has reiterated the same principles and the condition requiring production of original certificates/testimonials alongwith the form is upheld for the same reasons.

7. It is thus clear that it is in order to prevent the candidates from applying in more than one direct that the authorities required production of original certificate/s. In the facts of the instant case, the petitioner has submitted such an application in Kutch district and nowhere else. In cannot, therefore, be said that acceptance of the request made by the petitioner would run counter to the aforesaid decisions of the Division Benches of this Court. In that view of the matter and particularly considering the fact that the petitioner who may not have to suffer for the inadvertent mistake of not producing the original certificate alongwith the application form, this petition deserves to be allowed.

8. Accordingly, the petition is allowed. The respondents are directed to accept the petitioner's application submitted on 24.3.2004, alongwith the original certificate of Sangeet Visharad which the petitioner shall again produce before respondent No.1 by 3rd November, 2004. The respondents shall consider the petitioner's case for appointment to the post of Vidya Sahayak without raising any objection that the original certificate was not produced alongwith the application form.

Rule is made absolute.

Direct Service is permitted on 2.11.2004.

(M.S. Shah, J.)

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